

Bishop COZEN'S ARGUMENT,

PROVING, THAT

Adultery works a Dissolution of the Marriage.

Being the Substance of several of Bishop COZEN'S his Speeches in the House of Lords, upon the Debate of the Lord ROSS'S Case.

Taken from Original Papers writ in the Bishop's own Hand.

THE Question is indefinitely to be spoken of, *Whether a Man being divorced from his Wife, who hath committed Adultery, and is convicted of it, may Marry himself to another Wife or no, during the Life of her which is divorced.*

The place in St. Matthew the 5th, repeated again St. Matthew the 19th, has great Perspicuity: If it be not lawful for any Man to put away his Wife, and Marry again, except it be in the Case of Fornication, (for the displacing the Words, by putting the Exception before the Marriage, cannot alter the Sense) then a contrario, it must of necessity follow, That if the Wife be put away for Fornication, the Husband by the Tenor of Christ's Words is left free to Marry again; which Freedom is not allow'd the Adulteress her self, nor to any Man else that shall Marry her.

St. Mark and S. Luke have been oppos'd to S. Matthew; and it has been said, that Christ's words in S. Matthew did not properly belong to Christ's Disciples, or the Christian Church, as the words in S. Mark and S. Luke, which are absolute, do; which is a saying that neither I, nor, I think, no-body else ever heard of before: For Christ's Sermon in the Mount was spoken to his Disciples, and especially belonged to Christians.

'Tis clear they are spoken to his Disciples; for he says to them, that they are *the Salt of the Earth, and the Light of the World*; and that they are *blessed, when they suffer persecution for his Name's sake*; which no Man will say, or apply to the Jews. 'Tis true, that in the 19th Chapter of S. Matthew, Christ answers the Scribes and Pharisees, who came to tempt him with their Question, *Whether it was lawful for a man to put away his Wife for any cause, as they said Moses had permitted them to do.* But the Answer that Christ gave them, That it was not lawful, *but only in the case of Adultery, for men to put away their Wives, and to marry another*, was a Rule which concern'd all Christians to observe for ever after; and for that reason was recorded by S. Matthew.

The words in S. Mark and S. Luke, are not to be taken absolutely, but to be supplied and understood by his words in S. Matthew; as in many other Cases is clear; viz. the Thief upon the Cross, Baptism in the Name of the Father, Son and Holy Ghost, &c. whereof many Instances may be brought, as the destruction of Niniveh, &c.

But for Christ's words, the Exception confirms the Rule, and infers a Concession, that in the Case of Fornication, the putting away one Wife, and Marrying another, is allowed. It is like with divers other his Expositions, which are found in Scripture: For brevity, I will instance in this one (viz.) *Except ye repent, ye shall all likewise perish.* Upon which Text, if I or any Bishop else were to Preach, I believe we should not discharge our Duty, unless we should tell the People, That if by the Grace of God they did repent, they should not perish.

The Exception here, *unless*, is parallel with the 1 King: 3: 18. *None were in the house, except we twain* they two therefore were, others were not.

Such Exceptions proceeding from natural Equity, are tacitly implied in Laws, tho pronounced in general Terms.

But as to the Exception here, the Words are not capable of any other Sense than as I have observed; for except that Restraint be referred to Marrying again, the Sense would run thus, *Whoever puts away his Wife commits Adultery*; which stands not with Truth or Reason; since it is not the Dismissal that is Adulterous, but the Marriage of another. It is, therefore, the plain drift of our Saviour to teach the Pharisees, that the Marriage of a Second Wife after a Dismissal of a Former, upon any other cause, except for fornication, is no less than Adultery; thereby inferring, That upon a Just Dismissal for Fornication, a second Marriage cannot be branded with Adultery.

Besides, the Pharisee's Question [*Is it lawful for a man to put away his Wife for every cause*] was not without a plain implication of Liberty to Marry another; which our Saviour well knowing, gives a full Answer, as well to what he meant, as what he said; which had not been perfectly satisfactory, if he had only determined that one part concerning Dismissal, and not the other concerning Marriage; which Clause, if Two Evangelists express not, yet it must be fetch'd necessarily from the Third; since it is a sure and irrefragable Rule, *That all Four Evangelists make up one perfect Gospel.*

The Remonstrants and College of Down urge for the Popish Doctrine, Rom. 7. 2. *The woman which hath an husband, is bound by the law to her husband as long as he liveth.* But

1. This place is to be Expounded by Christ's Words.
2. St. Paul hath no occasion here to speak of Divorce, but of Marriage whole and sound, as it stands by God's Ordinance.
3. He speaks of a Woman who is under an Husband; so is not the that is divorced from him.
4. St. Paul useth this to his purpose of the Law being dead, to which we are not bound.

Nor is their Doctrine more favoured by 1 Cor. 7. 10. *Let not the man depart; as being in her Choice whether she would depart or not: But in the Case of Fornication, she was to depart, or rather be put away, whether she would or not.*

The Bond of the Marriage is to be enquired into, what it properly is. Being a Conjugal Promise Solemnly made between a Man and his Wife, That each of them will live together according to God's Holy Ordinance, notwithstanding Poverty or Infirmary, or such other things as may happen during their Lives. Separation from Bed and Board, which is part of their Promise so to live together, doth plainly break that part of the Bond whereby they are tied to live together both as to Bed and Board: The distinction betwixt Bed and Board and the Bond, is new, never mentioned in the Scripture, and unknown in the Ancient Church, devised only by the Canonists and the School-men in the Latin Church (for the Greek Church knows it not) to serve the Pope's turn the better, till he got it established in the Council of Trent; at which time, and never before, he laid his Anathema upon all them that were of another Mind; forbidding all Men to Marry and not to make any use of Christ's Concession.

Bed and Board, or Cohabitation, belong to the Essence and Substance of Matrimony; which made Erasmus and Bishop Hall say, *That the distinction of those two from the Bond, is merely Chimerical, and Fancy.*

The promise of Constancy and mutual Forbearance, if it hinders Divorce as to the Bond, hinders it also as to Bed and Board; because the same Bed, and the same Table were promised in the Marriage Contract; but the Promise does not extend even to Tolerating Adultery, or Malicious Disfection; which, according to God's Ordinance, Dissolves the Marriage.

Our Saviour speaks of Divorces Instituted by the Mosaic Law; but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce, among the Jews was this, *Be Expell'd from me, and free for any Body else* To give the Bill of Divorce, is from the Hebrew Root *Shalach*, which is to break, or cut off the Marriage. With this agree the Ancient Canons, Councils, and Fathers of the Church.

Council, Nicean. & Elib. forbid the retaining an Adulterous Wife. Council, Elber. Aurelian. & Arlesian. give Liberty in such Case to Marry again. Clement's Constitution, Tertullian. St. Basil in his Canons, approved by a General Council

and Marrying again. *Council Trent.* If they Marry in any other Case than Fornication, they are to be Excommunicated, and not otherwise. *Council of Florence.* gives Liberty to the Innocent Party to Marry after a Divorce. *Council Lateran.* gives leave for the Innocent Party after a Year to Marry again.

Council Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the First, he may remain with the Second.

Lactantius, S. Hieron and Epiphanius, are for allowance of Marriage after Divorce. *Clement Hom.* 19. 1 Cor. 7. says, *if the Marriage is dissolved by Adultery; and that the Husband, after he hath put her away, is no longer her Husband.*

Theophylact on the 10th. of *St. Luke,* says: That *St. Luke* must be interpreted by *S. Matthew.* *S. Hilary* is for marrying again, as *Dr. Fulk* saith upon *S. Matthew* the V. The *Eastern Bishops,* in the *Council of Florence,* are for marrying again. *Justin Martyr* speaks of a Christian Woman's giving a bill of Divorce to a Dissolute Husband, without finding any fault with it.

St. Ambrose says, a Man may Marry again, if he put away an Adulterous Wife; *Theodore* said of a Wife who violated the Laws of Marriage: *Therefore our Lord requires the Bond or Tie of Marriage to be dissolved.*

All the *Greek Church* to this day allow it. *Erasmus, Capeton,* and other *Papists* the *Civil Law,* and the *Laws of the Emperor,* are clear for it: And the *Constitutions of our own Church of England,* in the time of *H. 8. E. 6. and Queen Eliz.*

The *Practice of the English Church* in the *Stat. 1 Jac. 1. c. 11.* against second Marriages, Divorces are excepted; and in *Canon 107.* it is provided they shall not Marry again; but it is there said such Marriages are void, only the Cautions is forfeited: *Neither doth the Canon speak of such separations, wherein the Tie Bond is self it broken, as by Fornication.*

Even the *Common-Law* allows Marrying again, in case a Woman seek her Husband's Life; and in case of a Bond-woman. *Gratian* says, in the Case of Adultery Lawful Marriages ought not to be denied. In the Case of an Incurable Leprosie, it was the Advice of *S. Gregory* to *Austine* the Monk, That he that could not contain, should rather Marry. *Bellarmin* owns that the Bond of the Marriage of Infidels is dissolvable; but the Marriage of the Faithful, and of Infidels, is of the same nature; And *Justinian*, a *Jeinit*, confesses, that it is simply lawful for the Innocent Party to Marry again. And the *Roman Doctors* allow dissolution of the Bond of Marriage, if the Parties should, after consummation, transfer themselves into a Friery or Nunhery.

The *Canon* which in the case of Adultery prohibit Marrying in the Life time of the guilty Person, are contrary to Two *Reb. Leg. Eccl. Tit. de Adult. & Divorciis.*

Acts of Parliament made 25 H. 8. and 3 & 4 E. 6. wherein no *Canons* are allowed that be any way repugnant to the *Laws of God, or the Scripture, the King's Prerogative Royal, and the Statutes of this Land.*

Persons were to review the *Canon-Law,* in which Review, drawn up by *Archbishop Cranmer* the Innocent Person is permitted to Marry again, according to *Christ's Law and Concession.*

We have Examples of such Marriages in *H. 4. of France, H. 8. of England, Lord Mansjoy, Lord Rich, Bishop Thoroughgood,* and divers others. And it is observable, That in the Case of the *Margaret of Northampton, 5 E. 6.* who had been divorced for his Lady's Adultery, and Married another before any Act of Parliament made concerning it, an Act which passed afterwards (only two Spiritual, and two Temporal Lords dissenting) declares he had been at liberty by the *Laws of God to Marry,* and did Lawfully Marry another; Where the Act manifestly supposes, that whatever had obtained for Law till that time, was void, as being contrary to *God's Law.*

The most considerable Men of the Reformed Churches both at home and abroad, are of this Opinion: *Grotius* quotes *Tertullian* in whose time it was Lawful for the Innocent Party to Marry.

Lancelot Inst. Jur. Can. acknowledges that Divorce is a dissolution of the Marriage. *Selden,* who is not likely to contradict the *Laws of this Kingdom,* maintaineth, That Marriage after Divorce is to be allowed: And in that particular, *Dr. Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large: Marriage, says he, cannot be dissolved by Men at their pleasure; and for that reason, as it is considered simply and absolutely, it is rightly said to be indissoluble; because Marriage is not only a Civil, but a Divine Conjunction; and is also of that nature, that it cannot be dissolved without detriment to either Party. Yet it is not so indissoluble, but it may be dissolved for a Cause which God approves as just; for the Indissolubility was not instituted for a Punishment, but for the Comfort of Innocent Persons; and it admits an Exception, wherein God ceases to conjoin.

Adultery is one such Cause: hence it is, that a Contagious Disease is not a Cause of dissolving Marriage. By Adultery the very Essence of the Contract is direct, violated; but the Contract ceasing, the Bond depending on the Contract necessarily ceases. It is against all reason, that all Matrimonial Duties should be for ever taken away, for the Bond or Obligation to those Duties should continue. The words of our Lord, *Matth. 5. 32. and 19. 9.* have no distinction or limitation of the putting away, but simply and absolutely approve of putting away; therefore they approve of a putting away, not partial, or to a particular purpose, from Bed and Board, but Total.

None are against the Reformed Divines, but *Dr. Hoeson, Mr. Burny, and Dr. Prideaux.* *Dr. Hoeson* was a professed Adversary to *Dr. Raynolds;* who was a great Maintainer of the Church of England against all the Points of Popery, and particularly in this.

Dr. Taylor, Bishop Hall, Dr. Fulk, are for Second Marriages; no Authors against them but the *Council of Trent,* and those of the Church of Rome; whose Credit is only saved by those of our Church who agree with them.

Upon the difference of Explication between *S. Ambrose, Origen, and S. Austin,* a new kind of Divorce has been thought of from Bed and Board; but this Divorce, or Name of a Divorce, was unknown to the Jews and Ancient Christians.

I said so much before, at the First and Second reading of this Bill, that I was in good hopes to have had no further occasion, given me of answering any Objections against it now; but seeing divers new Arguments have been studied and framed against it since that time, I shall now endeavour to satisfy and clear them all.

1. The first Argument against it, is, That the Separation from Bed and Board doth not dissolve the Bond of Marriage. To which I must Reply, as I did before, That this is a distinction without a difference; newly Invented by the *Canonists* and *School-men,* and never heard of either in the Old or New Testament, nor in the times of the Ancient Fathers, who accounted the Separation from Bed and Board, to be the Dissolution of the Bond itself.

2. That first Institution of Marriage, that they may be one Flesh, is by Adultery dissolved, when the Adulteress makes herself one Flesh with another Man; and thereby dissolves the first Bond of her Marriage.

3. The Objection, that if the Bond be dissolved, and afterwards, if the Man or Woman be reconciled, they must be Married over again, is no necessary Consequence, no more than 'tis in a Person baptized, who may break his Covenant, and renounce his Baptism; and yet upon true Repentance be received into God's Favour by virtue of the first Covenant, without any new Baptism. Suppose a Witch, who they say makes a Compact with the Devil, to renounce her Baptism, should afterwards, by the Grace of God, seriously and truly Repent her self of the Wickedness; I do not believe that any body would take upon him to baptize her again; and if a Priest should renounce his Orders, and turn Turk, and yet afterwards repent him, and return into the Church, he need not be Re-ordained a second time. The Case will be the same in Marriage.

4. I said heretofore, That the *Roman Doctors* allow this Dissolution of the Bond, when the Man and Wife, even after the Consummation of Marriage, would transfer themselves into a Friery, or a Nunhery; but because it hath been since doubted, that no Authority can be shewed for this particular, I shall here shew it out of the old Constitutions of the Church of England.

Prov. Will. Lindewode, And in the Case of Religion, that is the true understanding, that so wit, either of them breaking themselves to Religion before Carnal Knowledge, the Bond of the Marriage be dissolved: but if both enter into Religion, and make solemn Profession, then such Marriage is dissolved, even as no the Bond.

5. It hath also been said, that if the Bill pass, it will pass against the Church of England: which I confess, I do not understand: For the Church of England is within the Kingdom of England; and if the Laws of this Kingdom be for the Bill, and have declared it by the Assent of the King, Lords, and Commons, as in the Case of the *Margaret of Northampton,* was heretofore declared, in the time of *King Edward the 3d.* That by the *Laws of God* the Innocent Party was at liberty to Marry again: Certainly the *Spiritual Lords,* as well as the *Temporal* and *Commons,* are bound to admit it; and I know was ever they should be against the Church of England, that join with the *Council of Trent,* and plead so much to uphold it; rather than over that join with the *Reformed Churches,* and plead against that *Canon of the Church of Rome,* which basely aid in dissolving it, if it be not agree with them.

As to the supposed Inconveniencies that will follow upon Marrying again.

1. More Inconveniencies will follow if they be forbidden to Marry again.

2. The Father would be in an uncertainty of the Children, if he should retain the Adulteress.

3. There would be danger of Poisoning, or killing one another, if do Second Marriage were allowed.

4. Where the Parties should come to new marriages for their own Lusts, the Magistrates have Power to over rule such Practices.

5. If they be kept together by Divorce from Marrying, it would occasion the Innocent Party to Sin.